IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

PRESENT
THE HON'BLE SHRI JUSTICE R.SUBHASH REDDY
WRIT PETITION No. 2703 of 1998

Dated 7th November, 2006

Between
M/s. Gannon Dunkerley & Company Limited
Banjara Hills, Hyderabad.

…Petitioner

And

Secretary, Industries & Commerce Department,
Government of Andhra Pradesh, Hyderabad
and others.

…Respondents.

ORAL ORDER:

The petitioner, a company registered under the provisions of the Indian Companies Act, 1956, has filed this writ petition for a writ of mandamus to declare the action of the respondents in imposing a penalty of Rs.7,64,997.70 and to set aside the order dated 26.8.1997 passed in Memo No. 278/M.II(1)/95-8 by the first respondent.

The petitioner entered into a construction agreement with another company, namely, M/s. Midwest Iron and Steel Company Limited for construction of Pig Iron Project at Dusi of Srikakulam District of Andhra Pradesh. The work included building and civil construction works involving earthwork, brick and rubble masonry work, plain and reinforced cement concreting of various grades, plastering, colouring, wood work etc. In the process of said construction, the petitioner procured minor minerals like sand, morrum, granite, metal etc. for the purpose of construction and completed constructions. Originally, a letter dated 18.7.1994 was addressed by the Assistant Director of Mines and Geology, Srikakulam to M/s. Mid West Iron and Steel Company Limited, Dusi, wherein the said company was informed that it has consumed 4689.88 Cum. of granite, 2334.72 Cum. of sand and 1261.20 Cum. of gravel for construction of the company at Dusi of Srikakulam District and there was no proof of payment of mineral revenue including the seigniorage fees and a demand was raised for payment of penalty of Rs.5,58,392.50ps, in addition to the normal seigniorage charges amounting to Rs.1,11,678.50 and Cess

charges amounting to Rs. 41,322/-. The Mid-West Iron and Steel Company paid an amount of Rs. 1,53,000/- towards the seigniorage fee and cess charges by way of two demand drafts bearing Nos. 982828 and 0476032 dated 2.6.1994 for Rs.53,000/- and Rs.1,00,000/- respectively.

At that stage, the petitioner herein has made a representation to the Director of Mines and Geology for waiver of penalty, which was imposed under Rule 26(3) of the Andhra Pradesh Minor Mineral Concession Rules. The Director of Mines and Geology by letter dated 25.1.1991 has addressed a letter to the petitioner that the petitioner-company supplied 4689.89 Cu.Mt of granite, 2334.72 Cu.Mt. of sand and 1261.20 Cu. Mt. of morrum for construction and the same were not covered by any valid permits and, therefore, as per Rule 26 (3) of A.P.Minor Mineral Concession Rules, any mineral transported or consumed for construction purposes without any valid permit is liable for 5 times penalty of the normal seigniorage fee, and, as the Mid West Iron & Steel Company has paid an amount of Rs.1,52,999.51 towards the seigniorage fee leaving the penalty amount unpaid and neither the Mid West Company nor the petitioner herein has produced documentary proof to the effect that the supplies are made with valid permits from the leased areas, the request of the petitioner for waiver is rejected and directed the petitioner to pay the penalty amount as demanded by the Assistant Director of Mines and Geology, Srikakulam in consultation with Midwest Iron and Steel Company immediately.

Aggrieved by the said orders of rejection dated 25.1.1995, the petitioner carried the matter in revision to the Government and the Government by impugned order dated 26.8.1997 passed in Memo No. 278/M.II(1)/95-8 rejected the revision petition filed by the petitioner by recording a finding that there is no valid reason to

concede the request of the applicant for waiver of penalty.

In this writ petition, it is submitted by the learned counsel for the petitioner that though for the purpose of construction, the petitioner has used the said mineral, namely, sand, morrum, metal etc., which is supplied by several suppliers, but, the same is under the impression that on the said mineral, seigniorage fee was already collected. It is further submitted that there is absolutely no reason for imposing the penalty of five times the seigniorage fee as much as the seigniorage fee was paid at the earliest point of time and the first respondent did not consider the revision petition in proper perspective.

On the other hand, it is submitted by the learned Government Pleader appearing for respondents that in this case, as the petitioner is a contractor who has constructed the project by entering into agreement with M/s Midwest Iron & Steel Company Limited, it ought to have utilized the mineral only after payment of seigniorage fee and as there was no documentary evidence in proof of payment of mineral revenue, the authorities have invoked the power under Rule 26(3) of the Rules and imposed the penalty.

After dismissal of the revision petition filed by the petitioner before the Government, there was a demand of Rs.7,64,997.70ps. The petitioner filed the writ petition questioning the said order passed by the Government confirming the demand of Rs.7,64,997.70ps, and, at the stage of admission, this court granted interim orders staying all further proceedings in pursuance of the impugned order of the Government, subject to the petitioner paying a sum of Rs.4,00,000/-. But, however, aggrieved by the same, the petitioner carried the matter in appeal by filing Writ Appeal No.349 of 1998, wherein the condition imposed in the interim order was modified and the petitioner was permitted to pay only 20% of the penalty amount, taking into account that the total seigniorage fee

was already paid.

In the revision petition filed before the Government, the petitioner has questioned the order dated 25.1.1995 issued by the Director of Mines and Geology. In fact, originally, the demand was raised only against M/s. Mid-West Iron and Steel Company Limited after making inspection of the structures, which were constructed by the petitioner, and, there was no demand at all against the petitioner in the initial stage. When the demand was raised, the total seigniorage fee was paid by M/s Mid-West Iron and Steel Company Limited. But, however, on the ground that the petitioner has constructed the said structures by entering into agreement with the third party, the petitioner made application to the Director of Mines and Geology for waiver of 5 times penalty imposed. Only basing on the representation filed by the petitioner, order dated 25.1.1995 came to be passed in proceedings Letter No. 23393/S1/94 (the said order is wrongly mentioned as order dated 28.1.1995 in the order passed by the Government and, actually, against the said order dated 25.1.1995, the matter was carried in revision) and even the revisional authority has proceeded as if the main order of demand and imposition of penalty was only against the petitioner herein. Even on merits also, it is the case of the petitioner that it constructed the said project by entering into agreement with M/s. Mid-West Iron and Steel Company Limited, and, in the process of construction, it utilized the material supplied by various suppliers under the bona fide impression that the mineral revenue including the seigniorage fee as per the provisions under A.P. Minor Mineral Concessional Rules framed under Mines and Minerals (Regulation and Development) Act, 1957 was paid. When the penalty was requested to be waived, the respondents have proceeded on the assumption that the law stipulates imposition of penalty up to 5

times and in that view of the matter, no order can be passed for total waiver of the penalty or for reduction of the quantum of penalty. At this stage, it is relevant to note that merely because Rules provide for imposition of penalty up to 5 times, the same need not necessarily be imposed in each and every case. The quantum of penalty to be imposed has to be determined having regard to the facts and circumstances of each case and the nature of defence of the parties and the quantum of mineral used. In the instant case, in spite of detailed explanation filed by the petitioner for waiver of the penalty, the Government has not considered the same in proper perspective and merely rejected on the ground that ignorance of provision of Rules is no execuse for waiver of penalty. Merely because the petitioner admitted that it was not aware of the fact that the contractors have not paid the seigniorage fee and was under the impression that the material was supplied after paying the seigniorage fee, but, that itself is not a ground to impose the maximum penalty of five times.

As much as the original seigniorage amount was already paid after it was raised and as the first respondent has not considered the various aspects, which arise for consideration for imposition of penalty and taking into account the explanation of the petitioner, I deem it appropriate that it is a fit case for reconsideration by the Government. Accordingly, order dated 26.8.1997 passed by the Government is set aside and the matter is remitted back to the first respondent for fresh consideration.

As much as during the pendency of the writ petition, there was a direction, which was modified by the Division Bench in Writ Appeal to the extent of directing payment of 20% of the penalty, the payment, if any, made pursuant to the said direction shall be subject to further orders to be passed by the revisional authority. However, till the revision is disposed of and orders are communicated to the

petitioner, no further demand shall be raised against the petitioner.

The writ petition is allowed to the extent indicated above. No costs.

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7.11.2006 **R.SUBHASH**

REDDY, J.

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